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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/777,987	02/06/2001	Michael Spencer	102636.58039US	3216

23911 7590 02/08/2008  
CROWELL & MORING LLP  
INTELLECTUAL PROPERTY GROUP  
P.O. BOX 14300  
WASHINGTON, DC 20044-4300

EXAMINER
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BORLINGHAUS, JASON M

ART UNIT	PAPER NUMBER
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3693

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



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FROM DIRECTORS OFFICE

January 14, 2008

Crowell & Moring LLP  
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P.O. Box 14300  
Washington, DC 20044

FEB 07 2008

TECHNOLOGY CENTER 3600

In re Application of: : **DECISION ON PETITION**  
Michael SPENCER : **REGARDING REQUEST TO**  
Application No. 09/777,987 : **WITHDRAW FINALITY**  
Filed: February 6, 2001 : **UNDER 37 CFR 1.181**

This is in response to the petition filed on December 1, 2006 under 37 CFR 1.181 requesting the withdrawal of the finality of the Office action mailed November 16, 2006 as being premature.

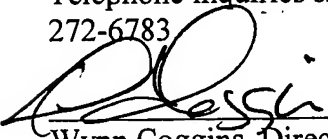
Applicant alleges that the Final rejection mailed November 16, 2006 was premature in accordance with the guidelines of MPEP 706.07(a) in that "the new grounds of rejection in the Office Action issued on November 16, 2006, was not necessitated by Applicants' amendment and was not based on information submitted in an Information Disclosure Statement." Applicant points out that "the Office Action issued on November 16, 2006, rejects claim 1 under 35 U.S.C. 112, second paragraph for indefiniteness. Specifically, the Office Action states that the recitation of the phrase 'where possible' renders claim 1 indefinite." Applicant further alleges that, "because the phrase 'where possible' was part of claim 1 as filed, the rejection of claim 1 for reciting this phrase was not necessitated by the Applicants' amendment of the claims."

A review of the record reveals that since the filing of the petition, an interview was held between the Applicant and the Examiner (see Interview Summary dated January 16, 2007) and agreement was reached that the Final rejection was improper. Further, the Finality of the Office Action was withdrawn and a new Non-Final Action was mailed February 7, 2007.

Therefore since the finality of the Office action mailed November 16, 2006 has already been withdrawn, Applicant's arguments as to the premature finality are considered moot.

The petition is **DISMISSED as moot**.

Telephone inquiries should be directed to James Kramer, Supervisory Patent Examiner, at (571) 272-6783

  
Wynn Coggins, Director  
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Jk/snm: 1/14/08

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